

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN THE MATTER OF

BARRY RENO

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MISC. PROCEEDING NO. 02-303

MEMORANDUM OPINION AND ORDER

On July 19, 2002, the Office of the Chief Disciplinary Counsel for the State Bar of Texas informed this court that Barry Reno had been suspended from the practice of law in the State of Texas since September 1, 2001. This suspension notwithstanding, Reno continued to engage in the practice of law in Texas and, while practicing law in Texas, filed pleadings with this court. By order entered July 24, 2002, this court suspended Reno, effective immediately, from the practice of law before this court until further order of this court.

In the order entered July 24, 2002, this court directed that Reno show cause on August 26, 2002, at 10:30 a.m., why he should not be suspended from the practice of law before this court for a period of time following the reinstatement of his license by the Supreme Court of Texas.

On July 30, 2002, in In re Lyons, case no. 98-35620-SAF-13, pending before this court, Thomas Powers, the Standing Chapter 13 Trustee, filed a motion for a show cause order, alleging that Vicki Cassell, a Reno employee and not an attorney, signed a pleading in Reno's name. As part of this miscellaneous proceeding, on August 2, 2002, the court entered an order directing that Reno and Cassell show cause on August 26, 2002, at 10:30 a.m., why they should not be sanctioned for the unauthorized practice of law.

On August 2, 2002, Reno filed a motion for relief from the court's orders. Reno requests in the motion that his suspension be lifted and that the Standing Chapter 13 Trustee distribute Chapter 13 plan payments from Reno's clients to him pursuant to the customary Chapter 13 process. The court set a hearing on the motion for August 26, 2002, at 10:30 a.m.

On August 13, 2002, the United States Trustee filed a motion to review certain debtors' transactions with their attorney, Reno. The motion involved Michael and Amelia Huey, debtors in a chapter 7 case, case no. 02-35228-HCA-7, pending before this court. On the morning of their reset meeting of creditors under 11 U.S.C. § 341, Reno informed the debtors that he could not appear with them at the meeting, as he had been unexpectedly called out of town for an emergency. Reno did not obtain substitute counsel for the Hueys and the Hueys attended the

meeting without counsel. Meanwhile, Reno had requested a fee of \$1,300 for his work on their Chapter 7 case. The court set the motion for a hearing on September 4, 2002, at 1:30 p.m.

On August 14, 2002, Powers filed a motion to pay funds earmarked for Reno into the registry of the court. By order entered August 16, 2002, the court directed the trustee to pay the July 2002 disbursement check for Reno to the court and set a hearing on the motion for August 26, 2002, at 10:30 a.m.

On August 26, 2002, the court conducted the hearing on the various motions and orders to show cause. Reno and Cassell appeared, as did the Standing Chapter 13 Trustee and the United States Trustee. One of Reno's clients, Nancy Clark, case no. 01-30987-SAF-13, also appeared, represented by substitute counsel.

August 26, 2002, Hearing

Reno was licensed to practice law in Texas on February 3, 1978. Since September 1, 1987, Reno has been suspended from the practice of law in Texas eight times for the non-payment of state bar dues and four times for the non-payment of attorney occupation taxes. On September 1, 2001, Reno was suspended for non-payment of dues. He was not reinstated until July 31, 2002. Reno concedes that he nevertheless practiced law in Texas during that 10 month suspension. He could not provide a reason for the delay in paying his dues. In the last decade, Reno has been suspended for a total of four years.

On July 17, 2002, the clerk of this court received a check from Reno in the amount of \$550 returned for insufficient funds. Reno wrote the check to cover filing fees or filing fee installment payments in five cases. As of the August 26, 2002, hearing, Reno had not paid the fees. The cases were therefore ripe for dismissal.

However, in each of the five cases, Reno concedes that his clients paid him the funds for the filing fees or filing fee installment payments. Reno deposited the funds in his operating account, and not in an IOLTA trust account. Reno drafted the check tendered to the clerk from his operating account. Reno concedes that he did not record all checks drawn on that account and, as a result, did not know the account balance when he tendered the check to the court. The account lacked sufficient funds to cover the check. Reno used his clients' money to pay his operating expenses, leaving insufficient funds in his operating account to pay their filing fees. But for the court's intervention, this would have resulted in the dismissal of all five cases, to Reno's clients' harm.

Reno stated that it was his practice to deposit his clients' money in his operating account rather than in a trust account. Reno's only explanation was that the use of the operating account rather than the trust account was easier.

Reno and Cassell concede that Cassell, at Reno's request, signed Reno's name to a pleading in the Lyons case. This occurred while Reno was suspended. Rather than arrange for substitute counsel, Reno had Cassell sign his name. Cassell thereby engaged in the unauthorized practice of law.

On August 10, 2002, at a hearing to confirm her Chapter 13 plan, Betsy Cosby, the debtor in case no. 01-37911-SAF-13, testified that Reno drafted a plan providing for payments of \$100 more per month than she could afford, while telling her that he would revise the plan payments to a lower amount. Reno never attended to that matter. As a result, at confirmation, Cosby was delinquent in her plan payments, thereby preventing the court from confirming the plan. Reno did not inform Cosby of his suspension and did not arrange for an attorney to represent Cosby at the confirmation hearing. Cosby appeared without the assistance of counsel. The court continued the case so Cosby could attempt to rectify the plan payments.

In the case of Nancy Clark, case no. 01-30987-SAF-13, Clark's home had been posted for foreclosure. Reno filed an adversary proceeding to enjoin the foreclosure sale but removed his request for a temporary restraining order from the court's docket. Clark complained about the lack of communication from Reno. She filed a grievance with the state bar, and hired substitute counsel who obtained relief for her.

Meanwhile, even after the entry of this court's suspension order, Reno continued to practice or attempt to practice before this court. For example, on July 26, 2002, he signed an "agreed order" with Dallas Telco Federal Credit Union for his client, Wayne Douglas Black, Jr., in case no. 02-33212-SAF-7. The agreement addressed the time for the creditor to file a complaint under 11 U.S.C. § 523. Counsel for the creditor tendered the agreement to the court on August 14, 2002. Reno did not inform counsel for the creditor that he was suspended from practicing before this court. As a result, the creditor and the debtor were both left in a precarious situation.

Reno blamed these problems on a lack of support system and an inability to attend to personal business matters. He also stated that he recognized that he made serious errors in judgment. Off the record, he addressed personal matters and his ongoing efforts to address them.

Reno represented that he would develop an office management system, correctly handle clients' money through a trust account, and attend to state bar licensing requirements.

The court continued the August 26, 2002, hearing to September 4, 2002, to coincide with the United States Trustee's motion regarding the Huey case. The court charged Reno to address the following: (1) office management plan for trust fund use, license compliance, handling clients' money and similar

matters; (2) continuing legal education credits for ethics, including proper signing of pleadings; (3) retroactive effect of state bar reinstatement; (4) state bar assistance programs; and (5) probationary reinstatement to practice before this court.

September 4, 2002, Hearing

On September 4, 2002, Reno conceded that he did not truthfully explain to the Hueys why he could not represent them at their meeting of creditors. Of the \$1,300 contract fee amount, Reno stated that he received \$600 from the Hueys. He offered to refund \$400, asserting that he used the other \$200 to pay the filing fee. The Hueys, however, informed the court that they had actually paid Reno \$750, and requested a return of \$550. The court granted that request.

Reno's handling of the Huey matter symbolizes his problems. He could not represent the Hueys at the meeting of creditors because his license to practice before this court had been suspended. His license was suspended because he failed to attend to the most elementary requirement of paying his bar dues. Then Reno did not honestly explain his problems to his clients. Further, even with the United States Trustee motion set for hearing, Reno did not consult with the Hueys to attempt to address the situation, in addition to not knowing how much they had paid him.

Reno says that these problems notwithstanding, he attends to his clients' needs. At the time of his suspension, Reno represented 197 Chapter 13 debtors and 30 Chapter 7 debtors. He says for the most part he has handled those cases well. He says his problems stem from personal matters which he is addressing, office management inadequacies and oversight.

Unfortunately and most troubling, the court has heard these explanations before. On October 3, 2000, the Standing Chapter 13 Trustee filed an application for an order to show cause directing Reno to address his state bar suspension of September 1, 2000. Misc. proc. no. 00-302. The court held a hearing on the matter on October 19, 2000. The trustee filed the application "because he thought it was his duty to notify the Court when an attorney was operating with a suspended license." Tr., 5-6. The court asked Reno to address his failure to pay his bar dues. Reno responded:

That was an oversight, Judge. Last year I did let - about a year ago I did let a secretary go. And I worked for a period of time, perhaps eight months maybe a little bit longer by myself with someone part-time doing my data entry for me. It was pretty difficult. I will admit that. And this was an oversight. As soon as I found out about it, I went down to - I went down to Austin and - I flew down to Austin right then before I did anything else and cured that occupation tax and came back and notified Mr. Powers of that.

Tr., 5.

Reno was suspended on September 1, 2000, for not paying his state bar dues and his occupation tax. He was reinstated on

October 2, 2000. The trustee served his application for the show cause order on Reno on October 2, 2000.

Reno told the court that he had "finally found a secretary that loves this work." Tr., 7. The court asked Reno about unpaid taxes. Reno said "I am resolving that, Judge. I have an attorney in Fort Worth that is working with me on that particular problem." Tr., 8. Reno conceded that he faced a sizable tax bill. Reno also informed the court "I'm working very diligently not only in my personal life, but also in this practice. You can rest assured of that." Tr., 8. The court observed "when a lawyer has some problems with taxes, I worry about handling clients' money." Tr., 8.

Two years later, little has changed.

Yet, Reno requests that the court reinstate his license to practice before the bankruptcy court of the Northern District of Texas based on specific conditions. Reno derives his livelihood almost exclusively from the representation of Chapter 7 and Chapter 13 debtors. To assure that he can pursue that livelihood, Reno must tend to the basic state bar licensing requirements while properly handling his clients' money and tending to the sound operation of his law practice.

Reno has retained the services of Garner & Cooper, LLP, certified public accounts. Tom Garner of that firm has informed the court that the firm will provide bookkeeping and accounting

services for Reno's law practice. Garner will monitor and certify to Reno's handling of all client trust fund monies, and will implement a trust fund verification process. Garner provided a flow chart outlining how Reno will handle trust funds and how the Garner firm will monitor that process.

In addition, Garner's firm will process all of Reno's operating bills, including tax deposits, payroll and operating expenses. Garner will calendar and verify that Reno's state bar fees and occupation taxes are timely paid and that Reno timely completes his continuing education requirements.

For his part, Reno pledges to retain the Garner firm to perform those functions. Reno also proposes to hire a staff consisting of an office manager, a clerical assistant, a paralegal and a receptionist. To assist his staff, Reno has developed a flow chart for case procedures from initial client interview through the meeting of creditors.

Reno has also engaged in a study of the Texas ethics requirements concerning client money and trust funds, and licensing requirements. Reno has submitted to the court an exhibit book containing the state bar rules and leading Texas appellate decisions on these subjects. He also submitted to the court the Texas guidelines for the IOLTA process and Texas ethics opinions.

On September 4, 2002, Reno also committed to the court that he will continue to address his personal problems, and, in addition, will pursue state bar mentoring assistance programs.

Analysis

Reno derives his personal income from the practice of law before this court. Nevertheless, his failure to attend to elemental state bar licensing requirements has resulted in two disciplinary proceedings before this court in two years. Despite his representations during the first proceeding, he failed to attend to his licensing requirements again, the very next year.

Reno's failure to attend to these licensing requirements suggests to this court an inability to attend to the needs of his clients. The record from the August 26, 2002, hearing and the September 4, 2002, hearing establishes that, indeed, Reno has misused client money in violation of the State Bar of Texas rules.

Reno or his office does not consistently attend to client details. He did not know how much the Hueys had actually paid him. He did not correct the Cosby plan payment amount. He did not attend to the Clark foreclosure issue. He directed a staff person, not an attorney, to sign a pleading for him, while he was suspended. He neither explained his circumstances to his clients, nor arranged substitute counsel for them.

The court is profoundly troubled by this situation. Yet, as with all disciplinary proceedings and judicially-imposed sanctions, the court must impose the least onerous sanction that fairly addresses the situation. Spallone v. United States, 493 U.S. 265, 280 (1990); In re First City Bancorporation of Texas, Inc., 282 F.3d 864, 867 (5th Cir. 2002). The court will not deprive Reno of his livelihood. Rather, the court will impose conditions on Reno's practice that address the problems revealed in these proceedings. Should Reno comply with those conditions, he will finally have addressed his problems. His clients will be served and protected. On the other hand, should Reno fail to comply with those conditions, the court will then be left with little choice but to suspend Reno from the practice of law before this court.

On September 24, 2002, Reno will have been suspended from practicing before this court for two months. The resulting impact on his practice should have a sufficient deterrent effect. The court, therefore, concludes that a two month suspension adequately addresses the situation.

Reno recognizes that, on this record, his reinstatement to practice before this court must be on a probationary basis. Misuse of client funds and perennial state bar suspensions for failure to meet licensing requirements demonstrates to this court an inability to attend to the needs of his clients. Conse-

quently, a violation of the terms of the probationary reinstatement will result in a suspension to practice before this court for at least one year and a recommendation to the United States District Court that Reno's license to practice before the district court be revoked.

Reno also requests that the funds paid into the registry of the court be released to Reno. Reno has established that upon payment of his state bar dues and occupation tax, his license to practice law in Texas had been restored. That restoration is retroactive to the inception of the suspension, but does not affect any disciplinary proceeding. State of Texas Bar Rules, Art. III, § 7(A). Reno's clients are therefore protected for actions taken by Reno on their behalf during his suspension. Reno may also receive compensation for that work.

Nevertheless, the court has directed that the refund of fees to the Hueys be paid from the funds in the registry of the court. The court has entered an order implementing that direction. Furthermore, if Reno has not covered the bad check he tendered to pay filing fees by the time of the entry of this order, the court will direct the payment of those filing fees from the funds in the registry of the court. Reno's clients have unpaid filing fees in 6 additional cases. If Reno received client money for these cases, the court will direct that those filing fees be paid

from the funds in the registry of the court. Reno's clients will thereby be protected from any misuse of their funds by Reno.

The two month suspension loses all deterrent effect if Reno effectively continued his bankruptcy practice during the suspension and then recovered fee payments from the trustee for those two months. The suspension must therefore cover two months of fees, at least to the extent needed to protect clients. The Standing Chapter 13 Trustee shall tender the August 2002 distributions earmarked for Reno to the registry of the court. The clerk of court shall hold those funds with the remainder of the July 2002 funds until further court order.

Reno shall file a schedule with this court showing all cases filed by him on behalf of his clients from September 1, 2001, to September 24, 2002. The schedule shall disclose payments by his clients to Reno intended to cover the filing fee or filing fee installment payment. Reno shall serve a copy of the statement on each client covered. Should any filing fee covered by the schedule remain outstanding, the court will direct payment of the filing fee from the funds in the registry of the court. After the court has determined that all clients have been protected, the court will enter an order regarding distribution of any remaining funds in the registry of the court.

The Standing Chapter 13 Trustee shall resume distributions to Reno with the September 2002 payment.

Order

Based on the foregoing,

IT IS ORDERED that, effective September 24, 2002, the suspension of Barry Reno from the practice of law before this court shall terminate, subject to the following terms of probation:

Barry Reno shall maintain and properly use an IOLTA trust account. Barry Reno shall timely comply with all State Bar of Texas licensing requirements. Barry Reno shall retain Garner & Cooper, LLP, to perform the services discussed in the above memorandum opinion. Barry Reno shall further maintain a law office staff consisting of, at least, an office manager, a clerical assistant and a paralegal. Barry Reno shall complete his law office flow chart for case procedures through case closing, with instruction and training for his law office staff, to assure attention to client detail. Barry Reno shall continue to obtain professional assistance for personal matters and shall endeavor to participate in an appropriate State Bar of Texas mentoring program.

Barry Reno shall obtain a hearing before this court every six months for two years beginning September 24, 2002, with notice to the United States Trustee and the Standing Chapter 13 Trustee. At each hearing, Reno shall demonstrate compliance with the terms of probation. His demonstration shall include proof of

payment of his state bar dues and the occupation tax, as well as compliance with continuing education requirements. Reno must also demonstrate with books and records his use of the trust fund.

Failure to comply with the terms of probation will result in a minimum one year suspension from the practice of law before this court with this court recommending that the United States District Court revoke his license to practice in the United States District Court for the Northern District of Texas, including this court.

IT IS FURTHER ORDERED that the Standing Chapter 13 Trustee shall deposit in the registry of this court the August 2002 pre-confirmation and plan payments earmarked for Barry Reno and shall resume payments to Reno effective with the September 2002 distribution. The funds in the registry of the court shall be disbursed pursuant to separate court order.

Signed this _____ day of September, 2002.

Steven A. Felsenthal, Chief
United States Bankruptcy Judge